

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 20 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0025-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
RICARDO OMAR GALINDO,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20090296001

Honorable Edgar B. Acuña, Judge

REVIEW GRANTED; RELIEF DENIED

Barton & Storts, P.C.  
By Brick P. Storts, III

Tucson  
Attorneys for Petitioner

K E L L Y, Judge.

¶1 Following a jury trial, petitioner Ricardo Galindo was convicted of aggravated assault of a law enforcement officer with a deadly weapon or dangerous instrument, second-degree burglary, and unlawful use of a means of transportation. The trial court imposed a combination of concurrent and consecutive terms of imprisonment,

all presumptive, totaling fourteen years. On appeal, we affirmed Galindo’s convictions and sentences. *State v. Galindo*, No. 2 CA-CR 2009-0365 (memorandum decision filed June 14, 2010). Galindo then sought post-conviction relief<sup>1</sup> pursuant to Rule 32, Ariz. R. Crim. P., asserting that trial counsel had been ineffective. The trial court dismissed his petition without conducting an evidentiary hearing, and this petition for review followed. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 Galindo argues the trial court abused its discretion by denying relief on his claim that trial counsel was ineffective in failing to request that the jury instruction on disorderly conduct, as a lesser-included offense of aggravated assault, include a definition of the mental state of recklessness. He also contends he was entitled to an evidentiary hearing on this claim. In order to state a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel’s performance fell below an objectively reasonable professional standard and that the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). Addressing this very issue on appeal, albeit not in the context of ineffective assistance of counsel, we found no error in the court’s having failed to provide a recklessness instruction to the jury, and noted that, because “Galindo [had] expressly argued [to the jury] that he had been reckless, any distinction between common usage and the statutory definition would appear irrelevant.” *Galindo*, No. 2 CA-CR 2009-0365, ¶ 6. Importantly, we also noted the absence of any prejudicial error; the jury found Galindo guilty of aggravated assault based on the theory that “the defendant

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<sup>1</sup>This superior court initially stayed the post-conviction proceeding pending the outcome of Galindo’s appeal.

intentionally placed another person in reasonable apprehension of imminent physical injury.” It therefore necessarily found he had acted intentionally, a more culpable mental state than recklessly. *Id.* ¶ 7.

¶3 Based on the record before us, we cannot say the trial court abused its discretion in denying Galindo’s petition for post-conviction relief. In a well-reasoned minute entry ruling, the court clearly and correctly addressed the merits of Galindo’s claim. We adopt that ruling and find no need to repeat the court’s analysis here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 Because we conclude the trial court did not abuse its discretion by denying post-conviction relief, we grant the petition for review but deny relief.

*/s/ Virginia C. Kelly*  
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VIRGINIA C. KELLY, Judge

CONCURRING:

*/s/ Garye L. Vásquez*  
\_\_\_\_\_  
GARYE L. VÁSQUEZ, Presiding Judge

*/s/ Peter J. Eckerstrom*  
\_\_\_\_\_  
PETER J. ECKERSTROM, Judge